

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11 po 03**

THIS MATTER came before the Court for the purpose of conducting a Rule 11 proceeding that took place in this matter on January 19, 2012. After completing the Rule 11 proceeding, the undersigned made inquiry of the government as to whether or not the government, at sentencing of defendant, was going to request that the Court consider the issue of restitution. The government, represented through Assistant United States Attorney David Thorneloe, advised that restitution was going to be sought at sentencing. After hearing from Mr. Thorneloe, the undersigned presented the following issues:

- 1) Is restitution in this matter governed under the provisions of 18 U.S.C. § 3663 or 3663(a);
 - 2) If restitution is governed under 18 U.S.C. § 3663, do the provisions of 18 U.S.C. § 3663(a)(1)(B)(ii) apply; and
 - 3) If restitution is to be considered under 18 U.S.C. § 3663, is restitution limited as set forth under 18 U.S.C. § 3663(c)(2)(B).

After hearing from both the government and the defendant concerning these questions, the undersigned directed the government to provide a brief concerning the government's position in regard to these questions and issues on or before February 20, 2012. The defendant shall be allowed up to and including March 5, 2012 to respond to the brief of the government. The briefs of the government and defendant shall be no longer than seven (7) pages.

The undersigned further presented to the parties the requirements of 18 U.S.C. § 3664(d)(1) which requires the government to provide to the probation office a listing of all amounts subject to restitution. The government shall be allowed up to and including February 20, 2012 to provide such documentation to the probation office. The records to be presented should include all medical records of treatment of the victim in this matter and all medical bills for services and further documentation showing whether or not such medical bills and expenses have been paid through hospitalization insurance or any other type of insurance coverage. The defendant will have up to and including March 5, 2012 to respond to the documents and to further present the affidavit which is required to be presented by the defendant pursuant to 18 U.S.C. § 3664(d)(3).

The undersigned will further request that the United States Probation Office prepare a separate report as set forth under 18 U.S.C. § 3664(a) providing the

undersigned with information sufficient for the Court to exercise its discretion in fashioning a restitution order. The report shall include all information as set forth under 18 U.S.C. § 3664(a) and such other information as the probation officer may deem applicable.

ORDER

IT IS, THEREFORE, ORDERED that:

- 1) The government shall provide to the undersigned a brief concerning the government's position in regard to the three issues presented in Order. Such brief shall be filed on **February 20, 2012**. The defendant shall be allowed up to and including **March 5, 2012** to respond to the brief of the government. The briefs shall have a page limit of seven (7) pages;
- 2) The government is hereby directed to provide to the United States Probation Office documentation with the amounts of restitution being requested by the government. Those records and documents should include all medical records of treatment of the victim in this matter and all medical bills for services and documentation showing whether or not such medical bills and expenses have been paid through hospitalization or any other type of insurance coverage;
- 3) The defendant will have up to and including **March 5, 2012** to respond to the presentation of the government concerning the medical bills and expenses and to present the affidavit which is required to be presented by defendant, pursuant to

18 U.S.C. § 3664(d)(3). All of the medical records and the contentions of the government and the contentions of the defendant in regard to the requirements of 18 U.S.C. § 3664(d)(1) shall be presented to the United States Probation Office;

4) It is further ordered that the United States Probation Office prepare a separate report as set forth under 18 U.S.C. § 3664(a) providing the undersigned with information sufficient for the Court to exercise its discretion in fashioning a restitution order;

5) The sentencing in this matter is hereby set for **April 30, 2012 at 9:30 a.m.**

Signed: February 8, 2012

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

